

**BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES**

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In the Matter of the	)	
Complaint Against the	)	<b>SUMMARY OF FACTS</b>
Butte-Silver Bow Law	)	<b>AND</b>
Enforcement Personnel PAC	)	<b>STATEMENT OF FINDINGS</b>

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Mona Neary, treasurer of the Butorovich for Sheriff campaign, filed a complaint against the Butte-Silver Bow Law Enforcement Personnel PAC alleging violations of several campaign finance and practices laws.

CLAIM I

Complainant Neary alleges that members of the PAC violated Montana Code Annotated § 13-35-226 when they conducted a political survey at the Public Safety Building.

CLAIM II

Complainant Neary alleges that members of the PAC violated Montana Code Annotated § 13-35-226 when they parked personal vehicles bearing candidate campaign bumper stickers or signs in the parking lot of the Public Safety Building.

**SUMMARY OF FACTS**

1. John Walsh was a candidate for the elective office of Sheriff in Butte-Silver Bow. Butte-Silver Bow is a consolidation of the local governments of the City of Butte and Silver Bow County, operating under a charter. Prior to the election, Walsh served as the acting Sheriff of Butte-Silver Bow.

2. Bob Butorovich was also a candidate for Sheriff in Butte-Silver Bow. Mona Neary, the complainant, is the treasurer of the Butorovich for Sheriff campaign organized to support the candidacy of Butorovich.

3. The Sheriff's Office and the Police Department are part of the Butte-Silver Bow Law Enforcement Agency (BSBLEA) located in the Public Safety Building at 120 South Idaho in Butte.

4. The Butte-Silver Bow Law Enforcement Personnel PAC (the PAC) is a political committee registered with the office of the Commissioner of Political Practices (Commissioner). The PAC's officers are Don Templin (president), Jerrod Hardy (vice president), and Eric McKiernan (treasurer), all of whom are employed by BSBLEA. According to its Statement of Organization on file with the Commissioner's office, the PAC's purpose is to "improve law enforcement through the political process."

5. Butorovich and Walsh ran against each other in the primary election held on June 6, 2000. Ben Thielen was also a candidate for the office of Sheriff. Butorovich and Walsh received sufficient votes to advance to the general election.

6. Lieutenant Mark Driscoll is an officer with the BSBLEA. His normal work shift is 7:00 a.m. to 4:00 p.m. In late May, 2000, Driscoll devised a written survey to be used to support the candidacy of Walsh. Driscoll prepared the survey and obtained responses to the survey on behalf of the PAC. He created the survey at home on his home computer not during work hours.

7. The survey was designed to determine how much support each candidate for Sheriff had among the employees of the BSBLEA. Those employees who chose to fill out the survey were asked to place an "X" next to the name of the candidate they supported (Butorovich, Thielen, or Walsh). They were also given the options of choosing "no preference" or "declines to participate." The survey advised participants that the results would be used in campaign ads supporting the candidacy of Walsh<sup>1</sup>.

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<sup>1</sup>The top of the survey contains the following words: "Butte Police Protective Association P.A.C. (Political Action Committee)." According to Driscoll, who drafted the survey, this was an error. The Butte Police Protective Association was not involved in the survey.

8. In May, 2000 Driscoll approached a number of BSBLEA employees in the Public Safety Building and requested that they complete the survey. Driscoll contends that he conducted the survey after 4:00 p.m. each day; thus, he was off-duty at the time. Witnesses contacted during the investigation of this complaint confirmed that they were contacted by Driscoll after 4:00 p.m.

9. Prisoners in Silver Bow County are detained in a facility at Montana State Hospital at Warm Springs, because the BSBLEA jail was damaged in a fire last year. BSBLEA jailors meet in the parking lot behind the Public Safety Building and car pool to Warm Springs. The jailors do not get paid for their travel time, and they typically arrive at the Public Safety Building parking lot ½ hour prior to the beginning of their work shift and ½ hour after their shift is over. Driscoll waited in the parking lot behind the Public Safety Building for all three shifts of jailors as they returned from working their respective shifts, to seek their participation in the survey. Driscoll stated that he was not on duty when he obtained the participation of the jailors in the survey.

10. The results of the survey were tabulated by Driscoll, Hardy, and Templin during their own time, at a private residence. The PAC then purchased political advertisements supporting the candidacy of Walsh based on the results of the survey. The ads represented that a recent survey showed 80% of the current employees of BSBLEA supported Walsh for Sheriff.

11. Both Driscoll and Walsh insisted there was no coordination between the PAC and the Walsh campaign regarding the survey.

12. None of the witnesses who participated in the survey felt pressured or intimidated when they were asked to complete the survey form.

13. According to Walsh, BSBLEA employees are entitled to park in the adjoining parking lot at the rear of the Public Safety Building. He stated, however, that during the campaign employees were told they could not park vehicles with campaign signs in the parking lot. The complaint alleges that members of the PAC parked their

personal vehicles in designated parking spaces in the parking lot, and many of the vehicles had Walsh campaign materials affixed to them. Butorovich stated that when directed to do so, employees moved their vehicles with campaign materials out of the parking lot to on-street parking places.

## **STATEMENT OF FINDINGS**

### CLAIMS I AND II

Montana Code Annotated § 13-35-226(3) provides:

A public employee may not solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue while on the job or at the place of employment. However, subject to 2-2-121, this section is not intended to restrict the right of a public employee to express personal political views.

The last sentence of the above statutory provision permits public employees to indicate their personal preference for a candidate, a ballot issue, or a political committee at work, so long as they do not engage in language or conduct that amounts to solicitation. Using public facilities, equipment, or time to conduct a poll or survey for use in a candidate's campaign constitutes solicitation prohibited by Montana Code Annotated § 13-35-226(3). See Matter of the Complaint Against Dennis Paxinos, Yellowstone County Attorney, Summary of Facts and Statement of Findings (May 11, 2000).

Driscoll conducted a survey in the Public Safety Building, a public facility that is Driscoll's "place of employment." The survey results were later used in the campaign of candidate Walsh. The conduct amounts to solicitation of support for Walsh and opposition to Butorovich and, therefore, does not fall within the "personal political views" exception in Montana Code Annotated § 13-35-226(3). Despite the fact, however, that Driscoll's conduct is contrary to the prohibition described in the statute, Driscoll is not a "public employee" subject to the restrictions of the statute.

Montana's campaign finance and practices statutes do not define the term "public employee." The term is defined in Montana's Code of Ethics as follows:

“Public employee” means:

(a) any temporary or permanent employee of the state or any subdivision of the state;

(b) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(c) a person under contract to the state.

Montana Code Annotated § 2-2-102(6). That definition does not include local government employees.<sup>2</sup> Montana’s Code of Ethics makes a clear distinction between public officers and employees and local government officers and employees. The statement of purpose for the Code of Ethics acknowledges that the code “recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category . . .”

Montana Code Annotated § 2-2-101. While one provision of the Code of Ethics, Montana Code Annotated § 2-2-121, establishes rules of conduct for “public officers and public employees,” another provision of the code, Montana Code Annotated § 2-2-125, establishes rules of conduct for “local government officers and employees.” If the Legislature intended to include local government employees within the definition of “public employee” under the Code of Ethics, why was a separate and less restrictive code of conduct enacted for local government employees?

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<sup>2</sup>A “subdivision of the state,” while not specifically defined in the Montana Code, is not the same as a “**political** subdivision of the state.” Examples of a subdivision of the state are a community college district (see Montana Code Annotated § 20-15-101) and a conservation district (see Montana Code Annotated § 76-15-103(3)). Cities, counties, and other local governments are often included in the numerous statutory definitions of the term “political subdivision.” See, e.g., Montana Code Annotated § 2-9-101(5), 2-16-602, 7-1-4121(15), and 13-1-101(18). Had the Legislature intended to include local government employees in the definition of “public employee” in Montana Code Annotated § 2-2-102(6), it could easily have inserted the word “political” before “subdivision.”

Montana's rules of statutory construction provide that when "the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears." Montana Code Annotated § 1-2-107. See also Dep't of Revenue v. Gallatin Outpatient Clinic, 234 Mont. 425, 430, 763 P.2d 1128, 1131 (1988). The definition of "public employee" in Montana Code Annotated § 2-2-102 does not include local government employees.<sup>3</sup> Accordingly, Montana Code Annotated § 13-35-226(3) does not apply to Driscoll or other employees of the BSBLEA, all of whom are local government employees. It is my sincere hope that the Montana Legislature will correct this apparent oversight and also apply the prohibitions of Montana Code Annotated § 13-35-226(3) to local government employees.

### **CONCLUSION**

Based on the preceding Summary of Facts and Statement of Findings, members of the Butte Law Enforcement Personnel PAC did not violate Montana Code Annotated § 13-35-226(3), because they are not "public employees" subject to the prohibitions of the statute.

Dated this \_\_\_\_\_ day of November, 2000.

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Linda L. Vaughey  
Commissioner

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<sup>3</sup>The only other definition of the term "public employee" is found at Montana Code Annotated § 39-31-103(9). That definition includes local government employees who are employed by local governments under Montana's Collective Bargaining Act. Because this definition applies in the context of collective bargaining, rather than employee conduct, it should not be applied when construing the provisions of Montana Code Annotated § 13-35-226(3).